

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EMMANUEL G. JUSTINIANO, JOSE NIEVES,
JOSE BARBOSA, DAHEED WILLIS, ANTHONY
KEITT, FRANK FODERA, JOSHUA MOSS,
OSCAR PUERTA, LUIS ARENAZA,
GUILLERMO MUNOZ, MILTON LAVERDE,
WILLIE S. BREWER, ISMAEL FRANCISCO,
STEVE M. NG, MANUEL SANTOS, JULIO
RIVERA, FREDDY VELEZ, BRYONT A LOPEZ,
MIGUEL CABREJA, JUAN VEVAS, TERRENCE
JONES, NICOLAS SALGADO, LUIS A. VEGA,
LOUIS TELESE, KENNETH WARING, ANTONY
G. HILL, JOSE GOMEZ ROSARIO, RODERICK
MASHALL, JOSE BLANCO, DAVID BAEZ,
KENYA EARLY, SAMMY HERNANDEZ,
NELSON MINYETY, BILL DELVIN, EDWIN J.
RAMIREZ CESPEDES, BENTO RODRIGUEZ,
PAUL STARAPOLA, ANDRES REYES, JESUS A.
MARTINEZ, DAVID BEACH, JONATHAN
DELROSARIO, JAMES SHAW, GARFIELD
GAMMON, DESEAN ALLEN, DERREK
HUGHES, JORGE A. MILANES, *and* CARMELO
NYANDUGAR, *each individually and on behalf of
all other individuals similarly situated,*

Plaintiffs,

v.

PHOENIX BEVERAGES, INC., WINDMILL
DISTRIBUTING COMPANY LP, d/b/a
PHOENIX/BEEHIVE, RODB, LLC, LONGFENG
TRUCKING, LLC, PHOENIX BEVERAGES MTO,
LLC, FORBEE CAPITAL KEG FUND, LLC,
HEINEKEN NORTH AMERICA, INC.,
HEINEKEN USA INCORPORATED, RODNEY
BREYMAN, GREGORY BREYMAN, PAUL
ROSSI, JOSEPH STANICH, *and* GEORGE
STRADA,

Defendants.

Case No. 13-CV-2332 (LTS) (JLC)

**DECLARATION OF
ROBERT E. CROTTY**

ROBERT E. CROTTY declares, pursuant to 28 U.S.C. § 1746, that:

1. I am an attorney admitted to practice in this Court and am a member of the law firm of Kelley Drye & Warren LLP, counsel to defendants Windmill Distributing Company, LP, d/b/a Phoenix/Beehive, Phoenix Beverages, Inc., RODB, LLC, Longfeng Trucking, LLC, Phoenix Beverages MTO, LLC, Forbee Capital Keg Fund, LLC, Heineken USA Incorporated, Rodney Brayman,¹ Gregory Brayman,² Paul Rossi, Joseph Stanich, and George Strada (collectively, “Defendants” or “Phoenix”) in this matter.³ I submit this declaration in support of Defendants’ motion for sanctions against Plaintiffs’ attorneys Walker G. Harman, Jr. and Peter J. Andrews of The Harman Firm, P.C. (collectively, “Harman”) pursuant to Fed. R. Civ. P. 11.

2. On April 9, 2013, Harman, on behalf of the five original Plaintiffs, filed the original Complaint in this action. (Dkt. #⁴ 1.)

3. On May 10, 2013, my partner, Eugene T. D’Ablemont, sent a letter on behalf of Phoenix to Harman setting forth in detail the factual and legal reasons that Plaintiffs’ claims fail as a matter of law. (A copy of Mr. D’Ablemont’s letter dated May 10, 2013, with Exhibits 1-4 thereto, was filed with the Court as Exhibit A to my Declaration in support of Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint, which is attached again hereto as Exhibit 3.)

4. On May 14, 2013, Peter Andrews responded by email to Mr. D’Ablemont that Harman did not intend to discontinue the action. (A copy of Mr. Andrews’ email was filed

¹ Brayman is incorrectly spelled in the case caption as “Breyman.”

² Brayman is incorrectly spelled in the case caption as “Breyman.”

³ My firm does not represent the defendant named as “Heineken North America, Inc.” Heineken North America, Inc. is not an operating company in the beer business and has never been related to Heineken USA Incorporated.

⁴ “Dkt. #” refers to entries on the Court’s Docket for this case.

with the Court as Exhibit B to my Declaration in support of Defendants' Motion to Dismiss Plaintiffs' Amended Complaint, which is attached again hereto as Exhibit 3.)

5. In response, on May 15, 2013, Mr. D'Ablemont sent another letter reiterating Phoenix's position. (A copy of Mr. D'Ablemont's letter dated May 15, 2013 was filed with the Court as Exhibit C to my Declaration in support of Defendants' Motion to Dismiss Plaintiffs' Amended Complaint, which is attached again hereto as Exhibit 3.)

6. Also on May 15, 2013, Harman filed the Amended Complaint, which added forty-two (42) Plaintiffs but alleged the same five causes of action. (Dkt. # 10.)

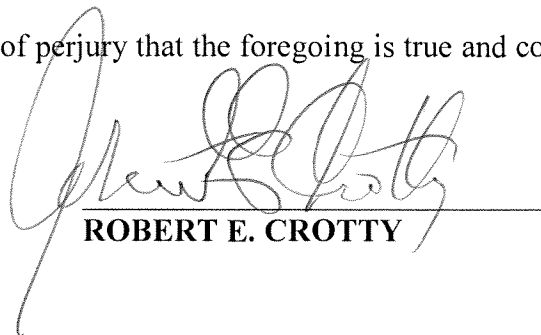
7. On May 30, 2013, Defendants timely filed their Motion to Dismiss Plaintiffs' Amended Complaint in its entirety pursuant to Fed. R. Civ. P. 12(b)(6) and, alternatively, Fed. R. Civ. P. 12(d). (Copies of the Notice of Motion, the Declaration of Rodney Brayman with Exhibits A-C thereto, the Declaration of Robert E. Crotty with Exhibits A-C thereto, and the Memorandum of Law filed in support of Defendants' Motion to Dismiss Plaintiffs' Amended Complaint are attached hereto as Exhibits 1-4.)

8. The Home page of the website for The Harman Firm, P.C. bears the heading "New York Employment Attorneys." (A copy of The Harman Firm, P.C.'s website Home page, *available at* <http://www.theharmanfirm.com>, is attached hereto as Exhibit 5.)

9. To date, Harman has not withdrawn this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 5, 2013.



ROBERT E. CROTTY